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No. 07-169

FILED

OCT 26 2007

OFFICE OF THE
SUPREME COURT U.S.

In The

SUPREME COURT of the UNITED STATES

HARALD NEIDERT and DIXIE NEIDERT, H/W,
Petitioners

v.

GLEN ONOKO ESTATES, Respondent

LISA SMULLIGAN, Petitioner

v.

GLEN ONOKO ESTATES, Respondent

On the Petition for reconsideration of
denial of Writ of Certiorari
To The Supreme Court of Pennsylvania

PETITION FOR RECONSIDERATION OF DENIAL OF WRIT OF CERTIORARI

Robert T. Yurchak, Esquire
Counsel for Petitioners
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PETITION FOR RECONSIDERATION:

1- The Opinion and Decision of Senior Judge Edward Biester is not a decision which is applicable to only the case of the Petitioners herein. It is being used as precedent for similar cases by the Glen Onoko Property Owners Association as the basis for pursuing other parties who are similarly situated to Petitioners herein. This use mandates that the Decision be fully considered now by the Appellate Courts or it will likely be considered at a later date when it is challenged as it should be.

2- On the date the Order was issued in this matter similar cases went to trial in a lower court whereupon it was shown that the Opinion of Judge Biester is inconsistent and contravenes applicable law. As a result the decision and Opinion was not followed. Because of this situation, unlike others similarly situated, Petitioners herein are being compelled, by a procedural error, not to have the merits of their case heard by an appellate court.

3- To preclude consideration by an Appellate Court based upon a procedural error does not comply with the dictates of Pa. Rule of Appellate Procedure No. 105 which provides for the liberal construction of the Rules to secure the just, speedy and inexpensive determination of every matter in which they may be applicable. Specifically, the rule provides "In the interest of expediting decision, or for other good cause shown, an appellate court may, except as otherwise provided in Subdivision (b) of this rule, disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

4- Pa. Rule of Civil Procedure No. 227.1 was intended to provide a lower court with the opportunity to fully address all issues to be raised upon an appeal in the interest of judicial economy. It was not intended to forestall consideration upon the merits of a case when a lower court judge has specified that he has fully considered all issues to be considered upon appeal. To use it as a bar for a procedural error forestalls a party from resort to the Appellate process.

5- "The Spirit of the Federal Rules of Civil Procedure favors preservation of the court's power to avoid manifestly unjust results in exceptional cases." See Johnson vs. New York N.H. & H.R. Company, 344 U.S. 48, 73 S.Ct. 125, 97 L.Ed.73 (1952): Unitherm Food Systems vs. Swift-Eckrich,Inc., 546 U.S. 397, 216 S.Ct. 980, 163 L.Ed. 2d 974(2006).

6- The Dissent in Johnson, supra , stated "Procedure is the means; full, equal and substantive law is the end.: quoting Pound, :The Etiquette of Justice", 3 Proceedings Neb St. Bar Assn 231 (1909),

7- Judicial Economy would be best served by having the Appellate Courts address the issues presented by this case now which can then be correctly used as precedent for future cases rather than addressing them at a later date when they are sure to reach these levels again.

8- Failure to grant the Petitioner the means to appeal works a grave injustice to petitioners in that the merits of their appeal will not be addressed despite he full opportunity which the trial court had to determine all the issues presented. No review will be forthcoming of the decision of the lower court in this instance which serves to chill the due process rights of petitioner in this instance.

WHEREFORE, *Petitioners respectfully request that* this Honorable Court reconsider its denial of the Petition for Writ of Certiorari so that petitioners can have the issues raised by this appeal addressed and not to permit this matter to be decided on the basis of a procedural issue while never addressing the merits of the case.

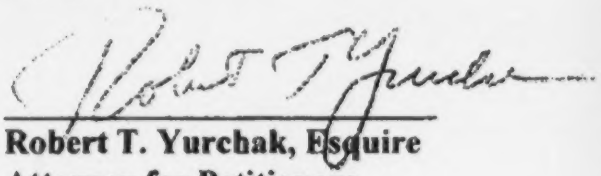
Respectfully Submitted,

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CERTIFICATE OF PRESENTATION IN GOOD FAITH

I, Robert T, Yurchak, Esquire, Attorney for the Petitioners herein, do hereby certify that I am presenting this Petition for reconsideration in Good Faith and I am not doing so merely for the purposes of delay. I further certify that the Application is restricted to the grounds stated herein.

Date: November 14, 2007



Robert T. Yurchak, Esquire
Attorney for Petitioners